

## **INDIANA MINE SUBSIDENCE REINSURANCE AGREEMENT**

This reinsurance agreement ("Agreement") is entered into between \_\_\_\_\_ (the "Insurer") and the Indiana Mine Subsidence Insurance Fund (the "Fund") established by Indiana Code § 27-7-9-7. This agreement supplements any prior reinsurance agreement entered into between the Insurer and the Fund and becomes effective on the later of July 1, 2015, or the date executed.

### **1. Definitions.**

- a. "Ceding commission" is the percentage or portion of mine subsidence insurance premiums established by the Commissioner and paid to the Insurer to compensate the Insurer for its administrative expenses in issuing and servicing its statutory mine subsidence insurance coverage, adjusting losses, and paying taxes.
- b. "Commissioner" is the Indiana Insurance Commissioner.
- c. "Loss" or "mine subsidence loss" is the amount paid or payable by the Insurer to its policyholders for mine subsidence damage sustained within the scope of the statutory mine subsidence insurance coverage.
- d. "Plan of Operation" refers to the operating procedures followed by the Fund and the Insurer, as established by the Commissioner.
- e. "Proof of reinsured claim" is the documentation required by the Plan to substantiate the fact that the loss in question was due to mine subsidence and was covered by the statutory mine subsidence insurance coverage.
- f. "Report of loss" is the Insurer's notice to the Fund that a policyholder has submitted a mine subsidence insurance claim.
- g. "Statutory mine subsidence insurance coverage" is the coverage which the Insurer makes available to policyholders on any structure located in eligible counties of the state, and which the Fund is obligated to reinsure, pursuant to Indiana Code Chapter 27-7-9.
- h. Terms not defined herein shall have the meaning provided by Indiana Code Chapter 27-7-9.

### **2. Reinsurance.**

- a. As of the effective date of this Agreement, the Fund promises to reinsure 100% of the Insurer's statutory mine subsidence insurance coverage provided in compliance with Indiana Code Chapter 27-7-9. The Fund shall pay the insurer's losses, subject to the conditions contained in this Agreement and Indiana Code Chapter 27-7-9.
- b. The Insurer agrees to cede to the Commissioner one hundred percent (100%) of any mine subsidence coverage issued under Indiana Code Chapter 27-7-9, subject to a maximum benefit per structure insured of the lesser of the primary coverage amount or Five Hundred Thousand Dollars (\$500,000).
- c. The Commissioner shall reimburse the Insurer from the Fund for all amounts paid to policyholders for mine subsidence insurance claims.
- d. The Insurer is not required to pay a claim for any mine subsidence loss insured under Indiana Code Chapter 27-7-9 if the amount available in the Fund is insufficient to reimburse the insurer for the claim.

3. **Collection of Premiums.**

- a. The Insurer shall collect the premiums for mine subsidence insurance, may retain the ceding commission in the amount set by the Commissioner, and shall remit the remainder of the premiums to the Commissioner for deposit in the Fund.
- b. The Insurer, in consideration of the ceding commission, shall undertake the adjustment of losses and the payment of taxes and absorb all other expenses necessarily incurred by the Insurer in the sale of policies and the administration of the mine subsidence insurance program under Indiana Code Chapter 27-7-9.
- c. The ceding commission set by the Commissioner is thirty percent (30%).

4. **Procedures.**

- a. The Insurer agrees to follow the Fund's procedures regarding the content and timely submission of the following:
  - i. Reports of reinsured policies in force;
  - ii. Premiums collected;
  - iii. Loss reports;
  - iv. Proof of reinsured claims;
  - v. Periodic status reports on open claims;
  - vi. Pleadings and other relevant documents regarding claims in litigation; and
  - vii. Other matters as deemed necessary by the Commissioner.
- b. The Fund shall establish procedures governing the Fund's reimbursement of insurers. Such procedures shall be contained either in the Plan of Operation or in periodic bulletins or circulars prepared by the Fund. The Plan of Operation and all such bulletins and circulars shall be distributed to Insurers.
- c. The determination of the Commissioner as to the amount of the ceding commission that the Insurer may retain shall be based on a consideration of the insurer's reasonable administrative costs, including insurance producers' commissions.

5. **Conditions.**

The Fund's obligations to provide reinsurance and to pay the Insurer's losses are conditional upon the Insurer's compliance with the following requirements:

- a. Remittance to the Fund of the appropriate mine subsidence insurance premiums collected from its policyholders, less its ceding commissions.
- b. Accurate and timely submission of loss reports.
- c. Accurate and timely submission of proofs of reinsured claims.
- d. Accurate and timely submission of reports of its statutory mine subsidence insurance coverage.
- e. Cooperation in the Fund's examination and audit of the insurer's mine subsidence insurance books and records.
- f. Assistance to the Fund, when requested, in the development of loss reserves for reported claims not yet paid or settled.
- g. Timely submission of status reports on open claims.
- h. Timely submission of pleadings and other relevant documents regarding claims in litigation.
- i. Adjustment of insured's loss in the customary manner.

6. **Recourse and Recovery.**

Except in case of fraud by the Insurer, the Commissioner has no right of recourse against the Insurer. The Insurer may settle mine subsidence losses in the customary manner. The Commissioner may require the Insurer to attempt to recover from a policyholder for amounts paid to the policyholder if, in the judgment of the Commissioner, the policyholder was not entitled to the amounts paid because of fraud or violation of the policy conditions. The cost of such a recovery attempt shall be borne equally by the Insurer and the Commissioner.

7. **Assignment; Successors.**

The Insurer binds its successors and assignees to all the terms and conditions of this Agreement. The Insurer shall not assign or subcontract the whole or any part of this agreement without the Fund's prior written consent.

8. **Authority to Bind Insurer.**

The signatory for the Insurer represents that he/she has been duly authorized to execute this Agreement on behalf of the Insurer and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Insurer when his/her signature is affixed, and accepted by the Fund.

9. **Funding Cancellation.**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

10. **Governing Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

11. **Termination and Amendment.**

This agreement shall terminate upon the repeal of the legislation authorizing the statutory mine subsidence insurance coverage. All subsidence insurance obligations under existing policies shall continue until their normal expiration unless otherwise provided by Indiana law. This Agreement may be amended from time to time, either as required by amendments to the legislation authorizing the statutory mine subsidence insurance coverage, or for any reason, but all amendments shall be in writing and signed by both parties.

12. **Nondiscrimination.**

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Insurer covenants that it shall not discriminate against any employee or applicant for employment relating to this agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Insurer certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the Fund and any applicant or employee of the Insurer or any subcontractor.

### **Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Insurer, or that the undersigned is the properly authorized representative, agent, member or officer of the Insurer. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Insurer, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

**In Witness Whereof**, Insurer and the Fund have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

**INDIANA MINE SUBSIDENCE  
INSURANCE FUND**

By: \_\_\_\_\_  
Stephen W. Robertson,  
Insurance Commissioner

Signed on \_\_\_\_\_  
(date)

**INSURER**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed on \_\_\_\_\_  
(date)

**\*This form reinsurance agreement was reviewed by the Indiana Office of the Attorney General on June 8, 2015**